

**FILED**

**OCT 19 2006**

NANCY MAYER WHITTINGTON, CLERK  
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

NATIONAL TREASURY EMPLOYEES UNION )  
1750 H Street, N.W. )  
Washington, D.C. 20006 )

Plaintiff,

v.

DEPARTMENT OF HOMELAND SECURITY )  
U.S.CUSTOMS AND BORDER PROTECTION )  
FREEDOM OF INFORMATION OFFICE )  
1300 Pennsylvania Avenue, N.W. )  
Washington, D.C. 20229 )

Defendant. )

CASE NUMBER 1:06CV01812

JUDGE: James Robertson

DECK TYPE: FOIA/Privacy Act

DATE STAMP: 10/19/2006

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

This is an action under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, as amended, to secure the release of records responsive to the January 27, 2006 FOIA request that the National Treasury Employees Union submitted to U.S. Customs and Border Protection.

**JURISDICTION AND VENUE**

1. This Court has jurisdiction over this cause of action under 28 U.S.C. § 1331 and 5 U.S.C. § 552(a)(4)(B) because this is an action to enforce the FOIA.

2. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e) and 5 U.S.C. § 552(a)(4)(B).

**PARTIES**

3. Plaintiff National Treasury Employees Union ("NTEU") is

an unincorporated association that has its principal place of business at 1750 H Street, N.W., Washington, D.C. 20006.

Pursuant to Title VII of the Civil Service Reform Act of 1978, Public Law 95-454, 92 Stat. 1111, NTEU is the exclusive bargaining representative of approximately 155,000 federal employees. NTEU represents the interests of these individuals by, inter alia, negotiating collective bargaining agreements, arbitrating grievances under such agreements, filing unfair practice charges, petitioning Congress for favorable working conditions, pay, and benefits, and litigating employees' collective and individual rights in the federal courts.

4. Defendant U.S. Customs and Border Protection ("CBP") is a subcomponent of the Department of Homeland Security, which is an agency of the federal government and subject to the requirements of the FOIA. CBP has possession of and control over the records that NTEU seeks.

**STATEMENT**

5. By letter dated January 27, 2006, NTEU requested the CBP Freedom of Information Act Officer to provide the following information:

FY 2005 award nomination forms for each bargaining unit employee, as well as the amount of any award each bargaining unit employee received in FY 2005, including but not limited to performance-based cash awards, special act and on-the-spot awards, honorary and nontraditional awards, quality step increases and time-off awards;

The total annual salaries and the total amount of award money, categorized by type of award, received in FY 2004 and FY 2005 by (a) CBP nonsupervisory employees who were in a bargaining unit or qualified for bargaining unit status, and (b) CBP supervisory and managerial employees;

Data showing the distribution of all FY 2005 performance-based incentive awards and QSIs by race, sex, gender, age, national origin, and disability for CBP employees, broken out by bargaining unit versus nonunit categories; and

Any analyses of the FY 2005 awards program or any segment of it.

6. By letter dated February 15, 2006, the Director of Program Management Staff of Human Resources Management acknowledged receipt of NTEU's information request. CBP did not, however, release the documents.

7. By letter dated June 2, 2006, NTEU filed an appeal with CBP. It informed CBP that it viewed CBP's refusal to provide the documents within the time limits established under FOIA as a constructive denial of NTEU's FOIA request.

8. By letter dated July 5, 2006, CBP acknowledged receipt of NTEU's appeal.

9. More than twenty working days have passed since CBP received NTEU's June 2, 2006 appeal. NTEU has not received a determination from CBP concerning its appeal; nor has CBP produced any materials in response to NTEU's appeal.

10. NTEU has a statutory right to disclosure of the records requested in its January 27, 2006 request, and there is no legal basis for the failure of CBP to respond to NTEU's request in a

timely manner.

**CAUSE OF ACTION**

11. Plaintiff reasserts and incorporates herein the allegations set forth in paragraphs 1 through 10.

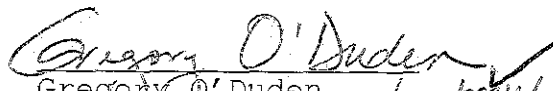
12. Under Section 552(a)(3) of the FOIA, 5 U.S.C. § 552(a)(3), CBP must produce, upon request, documents not specifically exempted by FOIA or for which disclosure is not otherwise prohibited by law.

**REQUEST FOR RELIEF**

WHEREFORE, plaintiff respectfully requests that this Court:

- (1) Declare that CBP's failure to release the records requested by NTEU is unlawful;
- (2) Order CBP to make the requested records available to NTEU;
- (3) Award NTEU its costs, reasonable attorneys' fees, and other disbursements in this action; and
- (4) Grant such other and further relief as may be just and proper.

Respectfully submitted,

  
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